



## **INTERNATIONAL TRADE COMMISSION**

### **Certain Chocolate Milk Powder and Packaging Thereof**

**[Investigation No. 337-TA-1232 (REMAND)]**

#### **Notice of a Commission Determination to Issue a General Exclusion Order; Termination of Investigation**

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order (“GEO”) prohibiting the unlicensed importation of chocolate milk powder and packaging thereof that infringe U.S. Trademark Registration No. 4,206,026 (“the ’026 mark”) (collectively, the “covered products”). The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket system (“EDIS”) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on December 1, 2020, based on a complaint filed on behalf of Meenaxi Enterprise Inc. (“Meenaxi”) of Edison, New Jersey. 85 FR 77237-8 (Dec. 1, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain chocolate milk powder and packaging thereof by reason of

infringement of the '026 mark. The Commission's notice of investigation named as respondents Bharat Bazar Inc. of Union City, California; Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Coconut Hill Inc. d/b/a Coconut Hill of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market ("Organic Food") of Fremont, California; India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California; Aapka Big Bazar of Jersey City, New Jersey; Siya Cash & Carry Inc. d/b/a Siya Cash & Carry of Jersey City, New Jersey; JFK Indian Grocery LLC d/b/a D-Mart Super Market of Jersey City, New Jersey; Trinethra Indian Super Markets of Newark, California; Apna Bazar Cash & Carry Inc. d/b/a Apna Bazar Cash & Carry of Edison, New Jersey; Subzi Mandi Cash & Carry Inc. d/b/a Subzi Mandi Cash & Carry of Piscataway, New Jersey; Subhlaxmi Grocers of Piscataway, New Jersey; Patidar Cash & Carry Inc. d/b/a Patidar Cash & Carry of South Plainfield, New Jersey; Keemat Grocers of Sugarland, Texas; KGF World Food Warehouse Inc. d/b/a World Food Mart of Houston, Texas; Telfair Spices of Sugarland Texas; Indian Groceries and Spices Inc. d/b/a iShopIndia.com of Milwaukee, Wisconsin; Rani Foods LP d/b/a Rani's World Foods of Houston, Texas; Tathastu Trading LLC of South Plainfield, New Jersey; and Choice Trading LLC of Guttenberg, New Jersey. *Id.* The Office of Unfair Import Investigations ("OUII") is also a party to the investigation.

On February 10, 2021, the former chief administrative law judge ("CALJ") issued an initial determination ("ID") (Order No. 6) finding all respondents in default. Order No. 6 (Feb. 10, 2021), *unreviewed by* Comm'n Notice (Mar. 2, 2021).

On May 24, 2021, Meenaxi moved for a summary determination of violation by all of the respondents, each of whom had previously been found in default. On June 16, 2021, OUII responded in support of the motion. On December 1, 2021, the former CALJ granted the motion as an ID (Order No. 15). No petitions for review of the ID were filed. The ID, however, noted discrepancies with respect to respondent Organic Food, calling into question whether that respondent was ever properly served with the complaint and notice of investigation and with the

CALJ's order to show cause why the respondents should not be found in default, Order No. 5 (Jan. 13, 2021). *See* Order No. 15 at 1 n.1. The Commission determined *sua sponte* to review Order No. 15, and ordered reconsideration of Order No. 6 as to Organic Food and/or any other respondents who may not have been properly served with documents in the underlying investigation. Notice at 3 (Jan 18, 2022). The Commission remanded the investigation to an ALJ for further proceedings. *Id.*

On remand, the CALJ issued Order No. 18, granting Meenaxi's unopposed motion for leave to amend the complaint and notice of investigation to (i) substitute Organic Food with proposed respondent Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market ("Organic Ingredients") of San Diego, California; (ii) correct the address of respondent New India Bazar Inc. d/b/a New India Bazar ("New India") of San Jose, California; (iii) correct the address of respondent Bharat Bazar Inc. ("Bharat Bazar") of Union City, California; and (iv) supplement the complaint with Exhibits 9-a, 9-b, and 9-c, concerning Organic Food and/or Organic Ingredients. Order No. 18 at 1-5 (Mar. 11, 2022), *unreviewed by* Comm'n Notice, 87 FR 22940 (Apr. 18, 2020). Meenaxi demonstrated that Bharat Bazar had been actually served with all of the documents in the investigation (prior to remand) despite incorrectly spelling Bharat Bazar's address as being on "Niled Road" instead of "Niles Road." Order No. 18 at 4.

The CALJ conducted remand proceedings as to Organic Ingredients and New India, first ordering them to respond to the amended complaint and notice of investigation, and then ordering them to respond to an order to show cause why they should not be found in default. *See* Order No. 19 (Mar. 11, 2022); Order No. 21 at 3 (May 3, 2022). On May 19, 2022, the CALJ issued an ID finding Organic Ingredients and New India in default. Order No. 23 (May 19, 2022), *unreviewed by* Comm'n Notice (June 14, 2022).

On June 15, 2022, Meenaxi filed a second motion for summary determination of violation of section 337 as to the defaulting respondents, and requested the issuance of a GEO. On July 6, 2022, OUII responded in support of Meenaxi's motion.

On August 3, 2022, the CALJ issued a remand ID (“RID”) (Order No. 27) granting Meenaxi’s motion. Order No. 27 (Aug. 3, 2022), *unreviewed by* Comm’n Notice (Sept. 19, 2022). The RID adopted substantially all of the findings of Order No. 15. The CALJ concurrently issued a recommended determination (“RD”) on the issues of remedy and bonding. The RD recommended the issuance of a GEO and setting the bond during the period of Presidential review in the amount of one hundred percent (100%) of the entered value of the covered products.

Accordingly, the Commission requested written submissions on the issues of remedy, the public interest, and bonding and the RD’s recommendation as to issuance of a GEO and bonding. 87 FR 58130-1 (Sept. 23, 2022). On October 3 and 12, 2022, respectively, OUII and Meenaxi submitted briefing responsive to the Commission’s request. No other submissions were received.

Having reviewed the record in the investigation, including the written submissions from Meenaxi and OUII, the Commission has made its determination on the issues of remedy, the public interest, and bonding. As all statutory requirements of this subsection are met here, the Commission has determined that the appropriate remedy is a GEO directed to the covered products pursuant to section 337(g)(2), 19 U.S.C. 1337(g)(2). The Commission has further determined that the public interest factors enumerated in Section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the GEO. Accordingly, the Commission has determined to issue a GEO prohibiting the unlicensed entry of chocolate milk powder and components thereof that infringe the ’026 mark.

Finally, the Commission has determined that a bond in the amount of one hundred percent (100%) of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission’s order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission voted to approve this determination on November 15, 2022.

The authority for the Commission's determinations is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 15, 2022.

**Katherine Hiner,**

*Acting Secretary to the Commission.*

[FR Doc. 2022-25250 Filed: 11/18/2022 8:45 am; Publication Date: 11/21/2022]